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reasonably and fairly paid on that account, and this rule applies to a sale of property of uncertain duration, such as a gas well.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 1054; Dec. Dig. § 351.* 13 Va.-W. Va. Enc. Dig. 506, et seq.]

Judgment reversed. All the judges concur.

VIRGINIA CEDAR WORKS v. DALEA.

March 11, 1909.

[64 S. E. 41.]

1. Pleading (§ 204*)—Demurrer to Declaration—Necessity of Sustaining as to Bad Counts.—It is a general rule of practice that if a declaration in tort contains two or more counts, some of which are good and others bad, a demurrer to the whole declaration and each count thereof should be sustained as to the bad counts, else a general verdict and judgment for the plaintiff will, as a rule, be set aside.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 486, 487; Dec. Dig. § 204.* 4 Va.-W. Va. Enc. Dig. 469.]

2. Appeal and Error (§ 1040*)—Harmless Error—Overruling Demurrer.—A verdict should not be set aside solely because of a faulty count in the declaration, a demurrer to which was overruled, where the court is satisfied that defendant was not prejudiced by such count.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4099; Dec. Dig. § 1040.* 1 Va.-W. Va. Enc. Dig. 590.]

3. Appeal and Error (§ 1040*)—Harmless Error—Overruling Demurrer.—If trial is had on the case made by a good count in a declaration containing other insufficient counts, no injustice will be done by refusing to set aside the verdict and judgment for plaintiff for error in overruling a demurrer to the whole declaration.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4105; Dec. Dig. § 1040.* 1 Va.-W. Va. Enc. Dig. 590.]

4. Master and Servant (§ 258*)—Injuries to Servant—Pleading—Sufficiency of Count.—A count in the declaration for injuries to a servant held not objectionable as failing to show a causal connection between the negligence alleged and the accident, and as not forewarning defendant of the case it was required to meet.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 823; Dec. Dig. § 258.* 9 Va.-W. Va. Enc. Dig. 718; 10 Id. 397.]

5. Negligence (§ 108*)—Statement of Cause of Action—Requisites of Declaration.—All that is necessary in a negligence case is to set forth the facts which constitute the cause of action, so that they may be understood by the defendant, the jury, and the court.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 174; Dec. Dig. § 108.* 10 Va.-W. Va. Enc. Dig. 397. et seq.]

6. Master and Servant (§ 153*)—Injuries to Servant—Warning Servant.—In an action for injuries to an employee whose hand was caught in a circular saw, based on the ground that he was a common laborer and was set to work alone with the saw without instructions and necessary assistance, it was not error to instruct that it was the defendant's duty to use reasonable care not to expose its servant to risks beyond those incident to the service at the time of the contract of employment, and if, while plaintiff was performing his duties with ordinary care, defendant violated its duty in this particular, proximately causing the injury, defendant was liable, unless the risk to which the servant was exposed was so glaring, constant, and imminent that an ordinarily prudent man would have refused to incur it.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 314-317; Dec. Dig. § 153.* 9 Va. W. Va. Enc. Dig. 686; 693, et seq.]

7. Trial (§ 259*)—Requested Instructions—Reduction to Writing.—To require a reduction to writing of a requested instruction qualifying or explaining an instruction already given is not unreasonable, and is in accordance with the reasonable and better practice.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 648; Dec. Dig. § 259.* 7 Va.-W. Va. Enc. Dig. 714.]

8. Master and Servant (§ 278*)—Action for Injuries—Sufficiency of Evidence—Cause of Accident.—Evidence, in an action for injuries to an employee whose hand was caught in a circular saw, held sufficient to show that the injury was caused by defendant's failure to provide an assistant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 681.]

9. New Trial (§ 104*)—Newly Discovered Evidence—Cumulative.—In an action for injuries to an employee whose hand was caught in a circular saw, defendant's theory as to the cause of the accident, as testified to by the foreman, was that plaintiff was at the rear side of the saw cleaning the trash away with a stick, and as he turned around he threw his hand on the back of the saw and received the injury. Defendant moved for a new trial for after-discovered evidence of two hands in its factory. Neither saw the accident, but one claimed to have seen plaintiff immediately before it occurred scraping sawdust from under the rear of the saw, and the other stated that he saw him immediately afterward at the rear of the saw. Held, that such evidence, if true, merely corroborated the foreman.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 218-220; Dec. Dig. § 104.* 10 Va.-W. Va. Enc. Dig. 449.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

10. New Trial (§ 102*)—Newly Discovered Evidence—Diligence.—There was no error in overruling a motion for a new trial on the ground of after-discovered evidence, where it does not appear that it could not have been discovered before trial by reasonable diligence.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 210-214; Dec. Dig. § 102.* 10 Va.-W. Va. Enc. Dig. 448.]

Judgment affirmed. All the judges concur.

CHESAPEAKE & O. RY. CO. *v.* HUNTER.

March 11, 1909.

[64 S. E. 44.]

1. Negligence (§ 111*)—Pleading—Insufficiency of General Allegations.—It is not sufficient for the declaration to allege negligence in a general way, but it must aver the acts relied on with reasonable certainty and show that they constitute the efficient and proximate cause of the injury.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 182; Dec. Dig. § 111.* 10 Va.-W. Va. Enc. Dig. 397.]

2. Pleading (§ 11*)—Facts of Evidence—Declaration.—The declaration in a personal injury case need only contain a concise statement of the material facts on which recovery is demanded, without pleading the evidence relied on to sustain its averments.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 31; Dec. Dig. § 11.* 10 Va.-W. Va. Enc. Dig. 397.]

3. Master and Servant (§ 258*)—Injury to Servant—Declaration—Allegations of Negligence.—The declaration, in an action by an employee against his master for personal injury from the fall of a rail upon him, held to insufficiently charge the acts of negligence relied on.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 816-836; Dec. Dig. § 258.* 10 Va.-W. Va. Enc. Dig. 397; 9 Id. 718.]

Judgment reversed. All the judges concur.

NORFOLK & W. RY. CO. *v.* HOLMES' ADM'R.

March 11, 1909.

[64 S. E. 46.]

1. Railroads (§ 309*)—Crossings—Care Required.—A railroad company must exercise care to avoid a collision at a highway crossing, and, the greater the danger, the greater is the vigilance required.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 981; Dec. Dig. § 309.* 3 Va.-W. Va. Enc. Dig. 127.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.